

Fiscal Estimate Narratives

SPD 9/20/2007

LRB Number	07-2698/3	Introduction Number	AB-0498	Estimate Type	Original
Description Costs of administering tests for intoxication					

Assumptions Used in Arriving at Fiscal Estimate

The State Public Defender (SPD) is statutorily authorized and required to appoint attorneys to represent indigent defendants in criminal proceedings. The SPD plays a major role in ensuring that the Wisconsin justice system complies with the right to counsel provided by both the state and federal constitutions. Any legislation that creates a new criminal offense or expands the definition of an existing criminal offense has the potential to increase SPD costs.

Although this bill does not create a new criminal offense, it would increase the monetary costs imposed upon defendants convicted of operating while intoxicated (OWI) when law enforcement has incurred expenses for testing of blood. Because there are already significant monetary penalties and costs in these cases, the proposed change is unlikely to result in many additional OWI trials and/or contested sentencing hearings. However, because the SPD's clients are often unable to pay the fines and costs under current law, we do not expect that many of them will be able to pay these additional costs (presumably, the chances of collecting these costs will be much better in cases in which the defendants were able to retain an attorney).

If, as anticipated, many defendants are unable to pay the increased costs, the SPD could see an increase in contempt cases in which the defendant faces potential imprisonment for non-payment (and thus, is eligible to apply for legal representation in the contempt proceeding). Counties have other options for collecting unpaid costs (for example, seeking a civil judgment), so SPD cannot predict the number of additional cases that might result.

In fiscal year 2007, the SPD appointed attorneys in 5,042 OWI cases (including both misdemeanors and felonies). If as much as 5% of OWI cases resulted in a subsequent appointment in a proceeding for contempt of court (for non-payment) of costs, the SPD would incur a cost per case of \$200.38, or a total of \$50,500 per year. The actual amount of additional costs would depend upon the number of OWI cases and the percentage of them resulting in contempt proceedings.

Counties are also subject to increased costs when a new crime is created. There are some defendants who, despite exceeding the SPD's statutory financial guidelines, are constitutionally eligible for appointment of counsel because it would be a substantial hardship for them to retain an attorney. The court is required to appoint counsel at county expense for these defendants. Thus, the possibility of additional contempt proceedings could add to county costs in cases in which the court appoints the defense attorney. The counties could also incur additional costs associated with incarceration of defendants in connection with contempt proceedings. The counties may also incur some administrative costs in their efforts to collect these costs.

Long-Range Fiscal Implications